



FPPC Enforcement Retrospective & Prospective

Policy Meeting
November 22, 2019

Sources of Cases

Enforcement cases are initiated by:

1. Complaints (Sworn, Non-sworn or Anonymous)
2. FPPC SEI Unit and filing officer referrals
3. Audits and audit referrals
4. Media reports
5. Staff-initiated investigations
6. Tips
7. Referrals from law enforcement agencies

Intake

All complaints and referrals go through the intake process to determine whether Enforcement should open a case.

In determining whether to open a case, Intake staff review the complaint or referral, any additional information provided by the complainant, publicly available information, and any material submitted by the subject of a complaint.

If the Intake staff determines sufficient evidence is present to suggest a violation may have occurred, then a case is opened.

Investigations

Investigators and attorneys work together to gather the evidence to prove or disprove violations occurred. Auditors and other staff sometimes assist with these investigations.



FPPC has subpoena power but must seek voluntary compliance prior to issuing subpoena unless:

Bank/business records

Threat of record destruction



Executive Director authorizes issuance of administrative subpoenas if:

Records are material to the matter, and

the ED reasonably believes the person has the information under their control.



Audits

- The PRA requires the FPPC and FTB perform audits of the candidates, committees and lobbying entities
- FPPC has the authority to perform discretionary audits
- FPPC also performs audits under contracts with County of San Bernardino and City of Sacramento
- Auditors can also assist with complicated campaign investigations when workload permits

Types of Resolutions

No Action closure letter

Advisory letter

Warning letter

Stipulation

Default judgment

Decision From Administrative Hearing

Civil action

Streamline & Mainline Settlements

Work with respondent (or counsel) to negotiate a mutually agreeable result, which must include:

- An admission of violations,
- Agreement on relevant facts, and
- Public disclosure of any previously undisclosed information.



Streamline settlements are the function of Commission approved criteria published in regulations 18360.1 and 18360.2 (approved Jan 17, 2019). If the case does not meet that criteria, then it does not qualify for a streamline penalty.



“Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.” (*Hanlon v. Chrysler Corp.*, (1998) 150 F.3d 1011, 1027.)

Program



2019 Enforcement Trends



Resource Allocation 2019/2020



Penalties 2019/2020



Streamline/WL Discussion



Roadblocks to Enforcement



Legislative Proposals



Regulatory Proposals



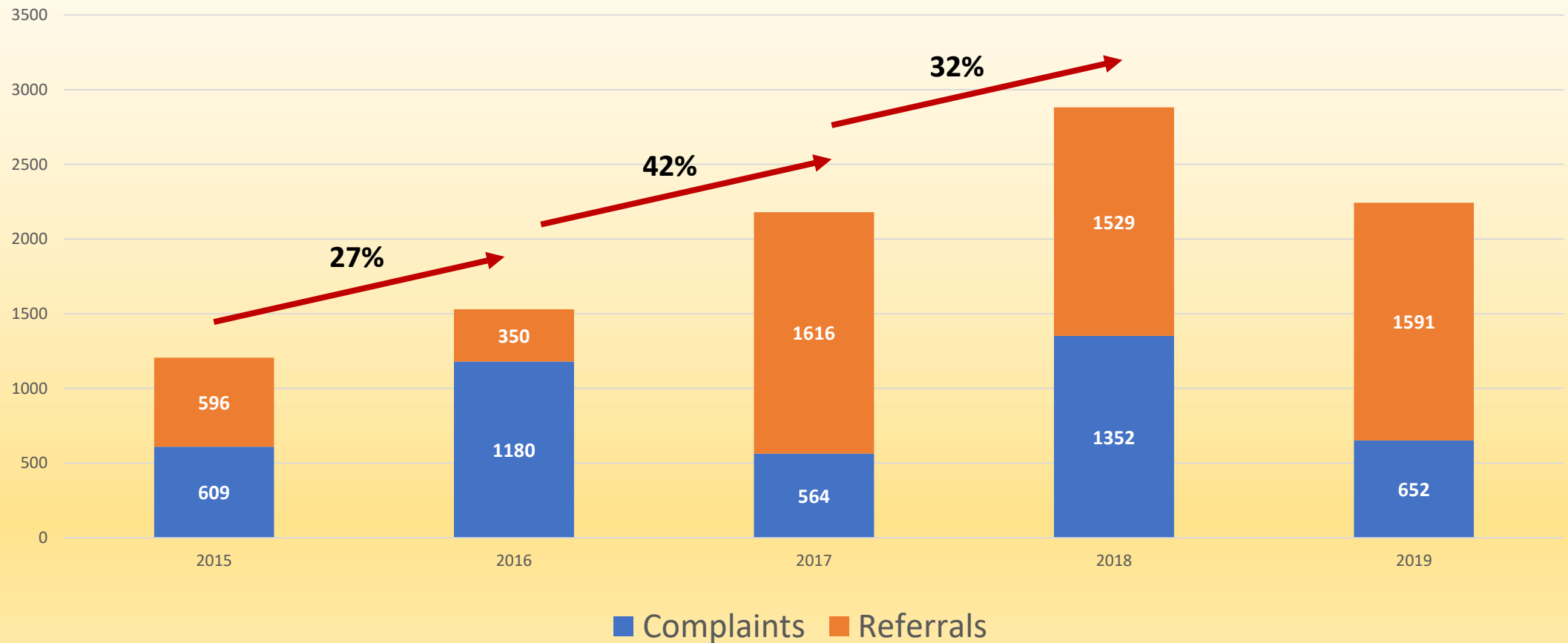
The year to come...

2019 Enforcement Trends

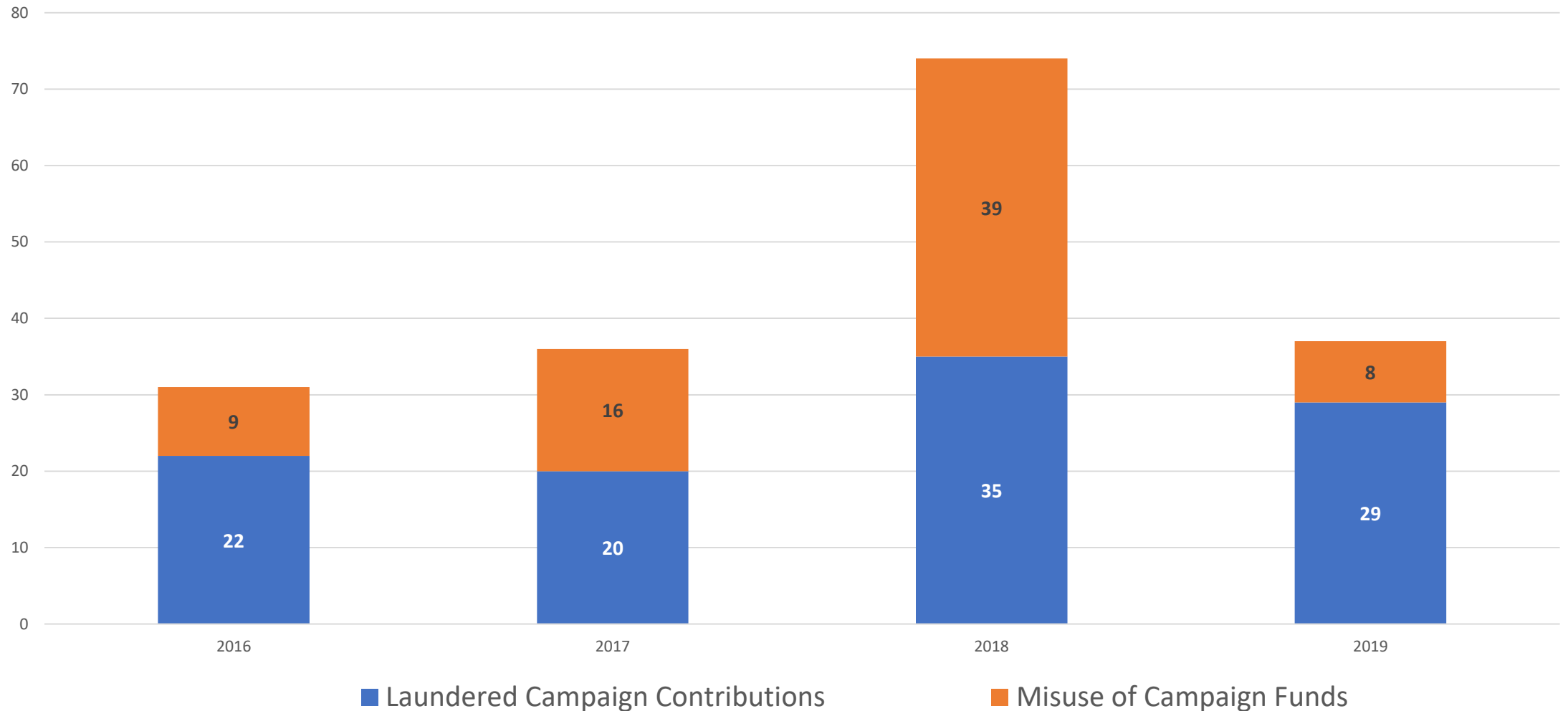
- Referrals Not Slowing Down
- Laundered Campaign Contributions
- Personal Use of Campaign Funds
- Advertisements/Mass mailers
- Campaign Related Communications at Public Expense



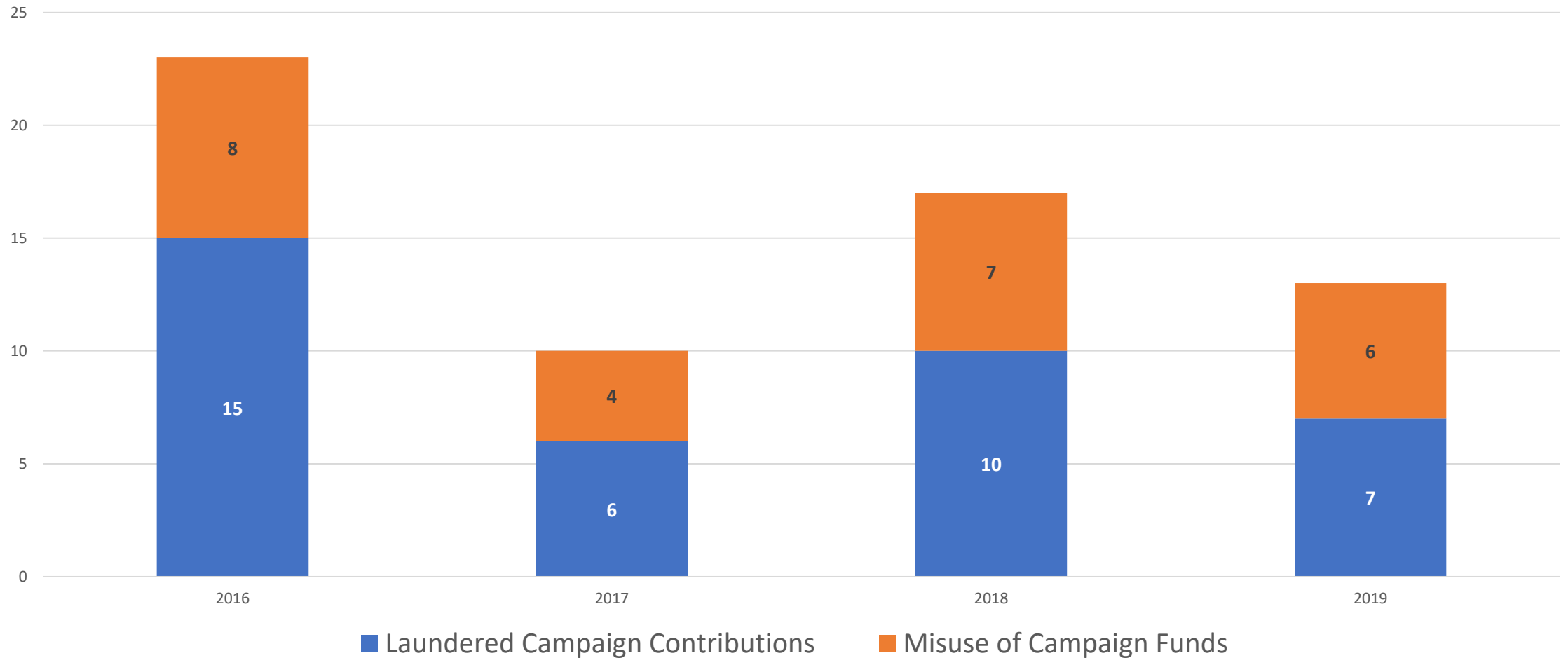
Complaints and Referrals Received (As of 11/1/19)



Laundered Campaign Contributions & Misuse of Campaign Funds (Complaints Received)

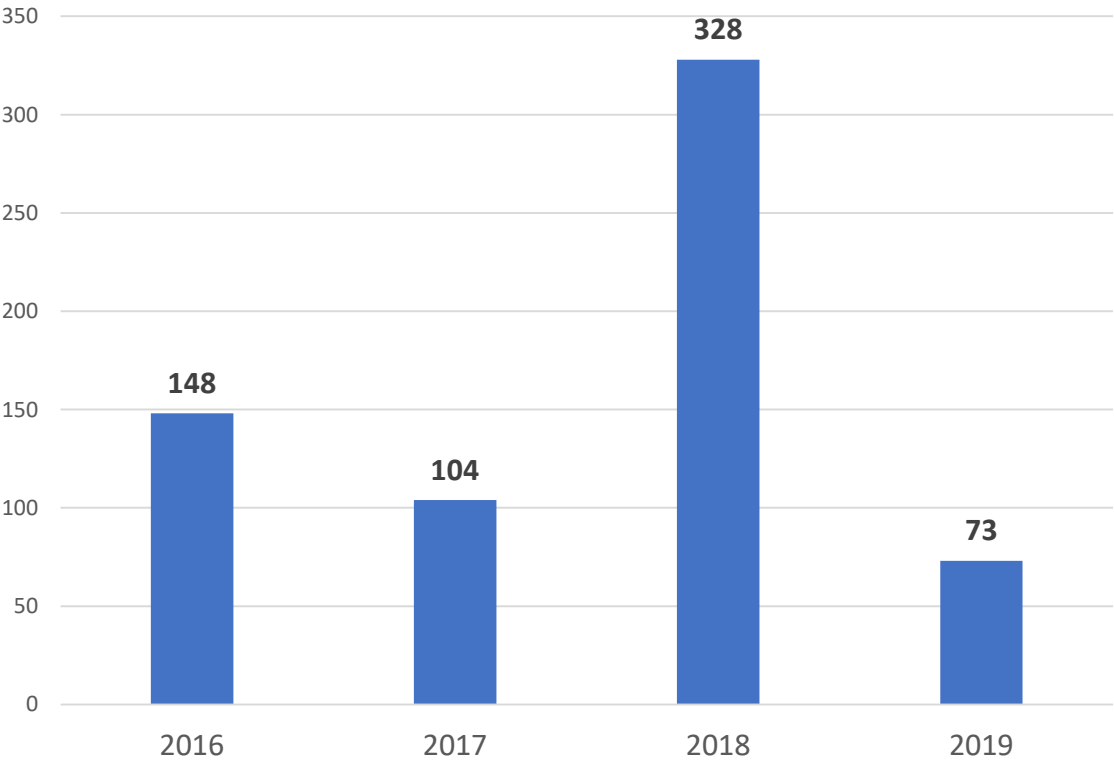


Laundered Campaign Contributions & Misuse of Campaign Funds (Cases Opened)

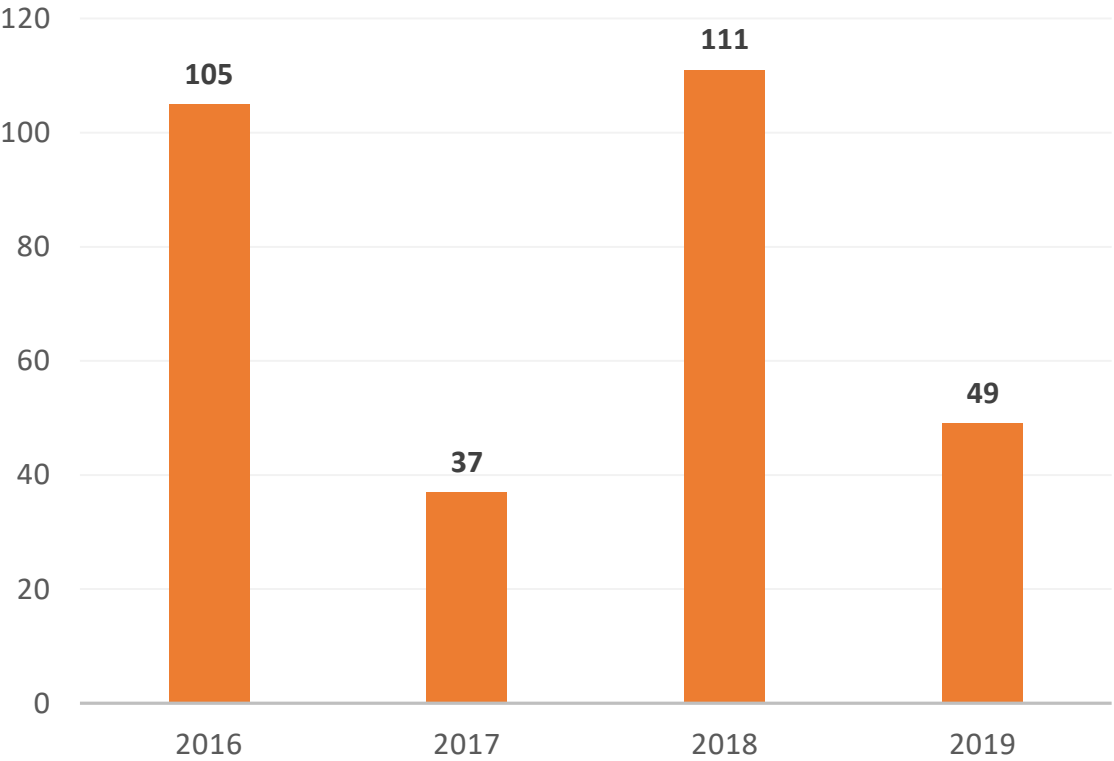


Advertisements & Mass Mailings 2016 - 2019

Complaints

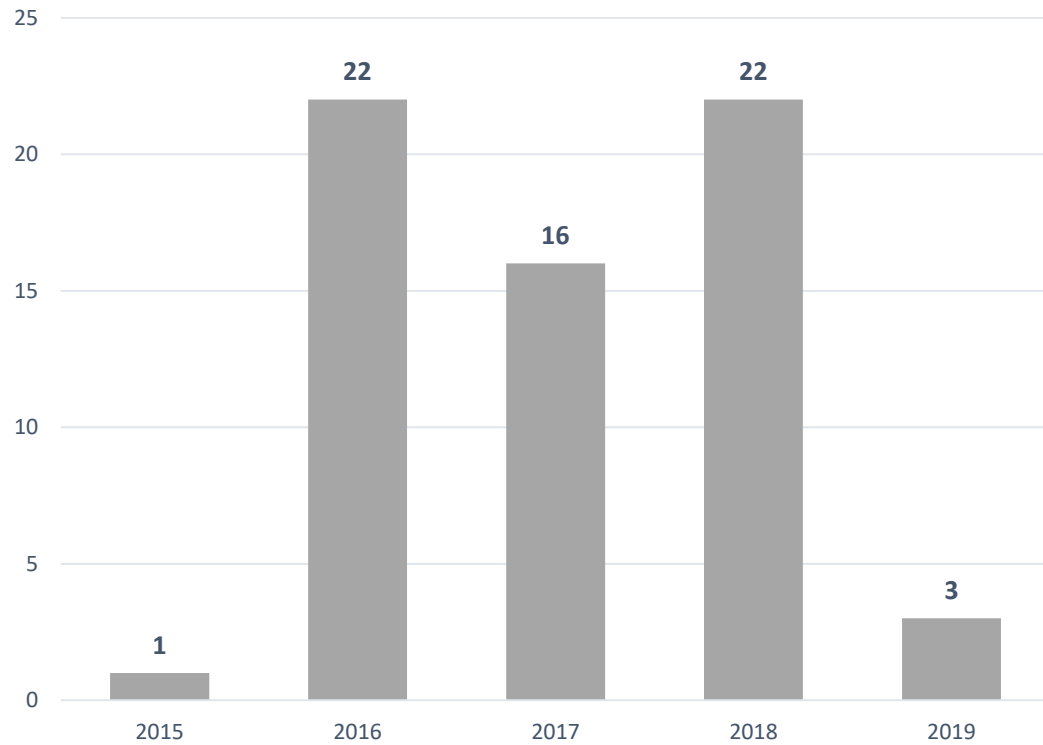


Cases Opened

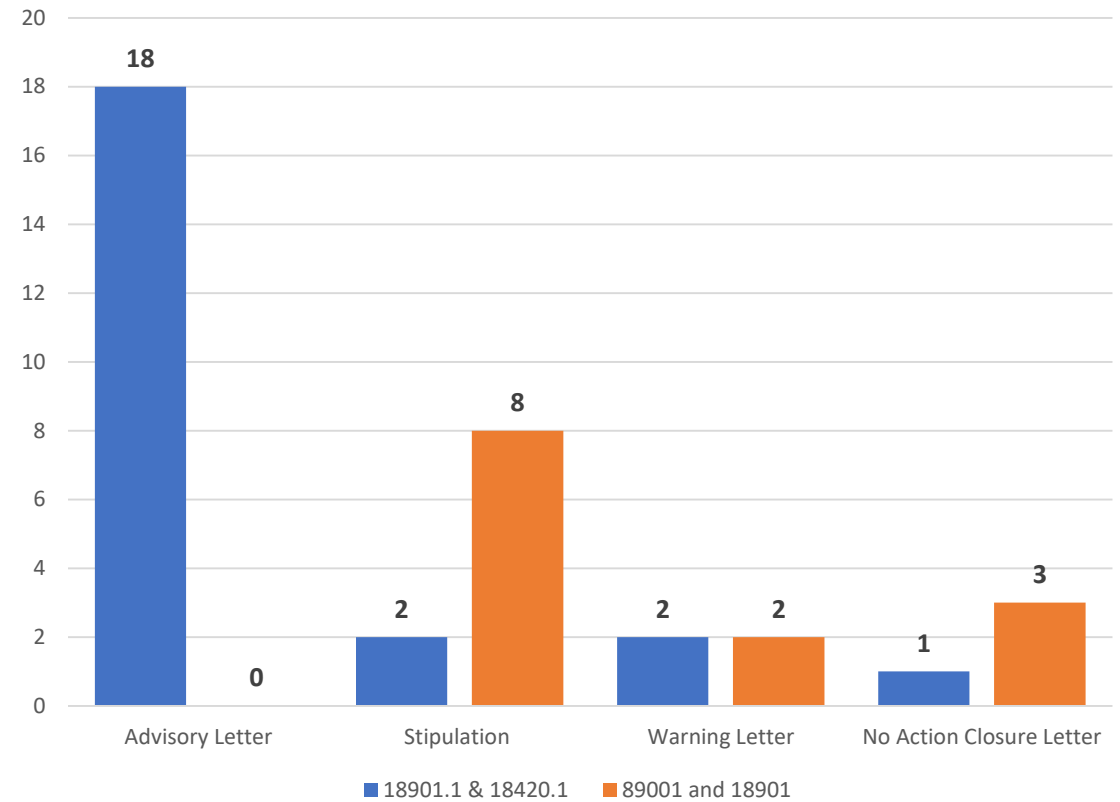


Mass Mailings/Ads Sent at Public Expense

Number of Cases Opened



Case Resolutions



Program



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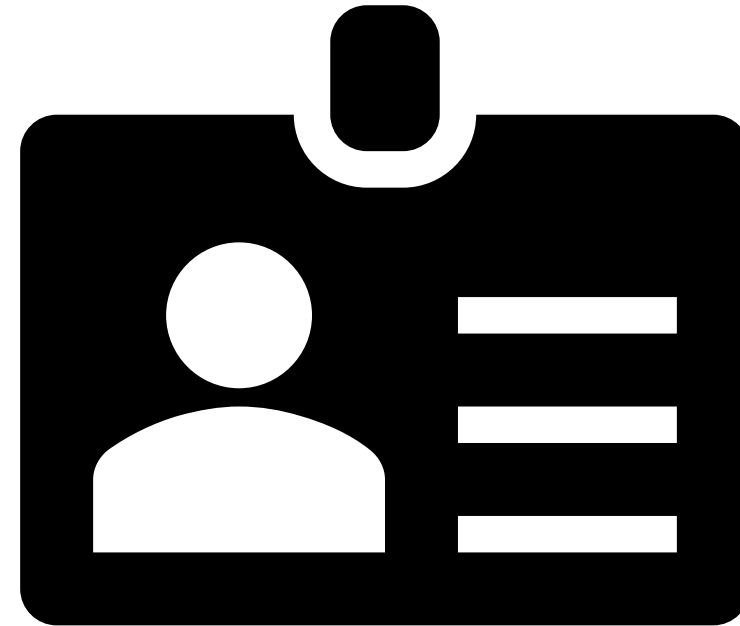
Regulatory Proposals



The year to come...

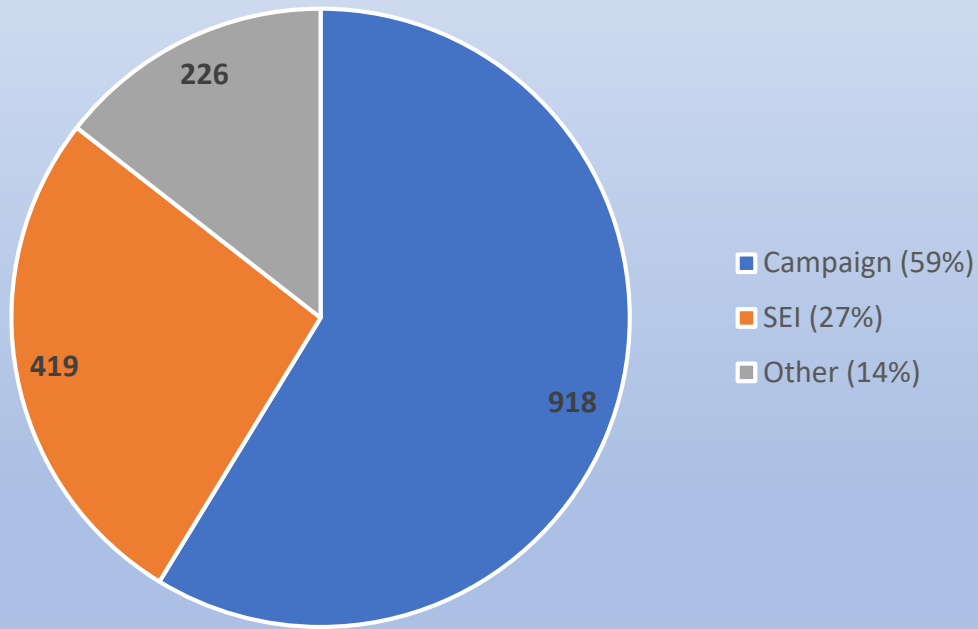
Resource Allocation 2019/2020 (Priorities)

- What was prioritized for 2019?
- What should be prioritized for 2020?

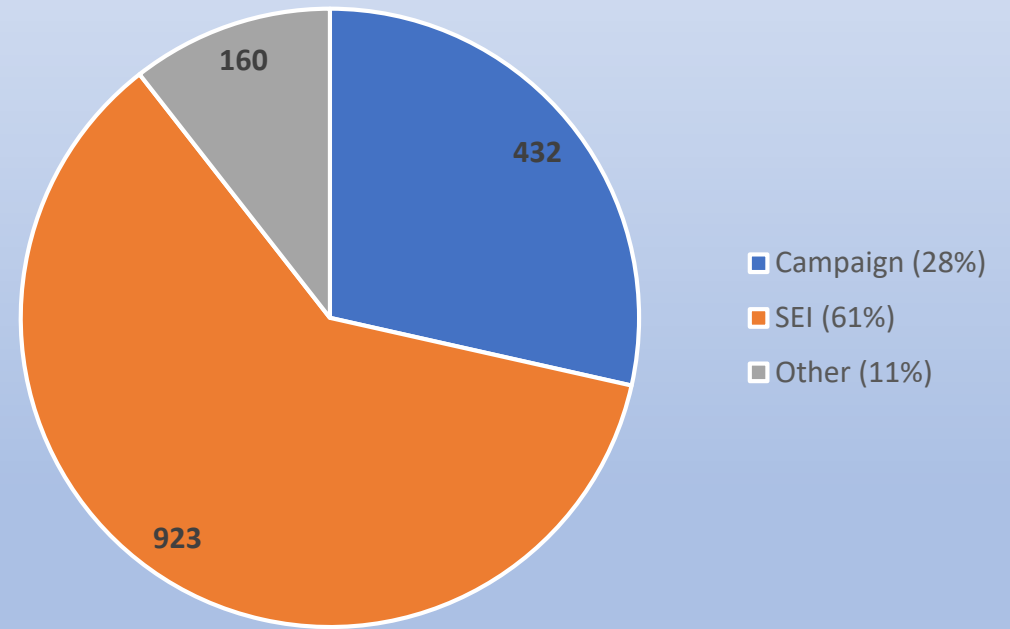


Types of Cases Opened 2018 v. 2019

2018 – Election Year

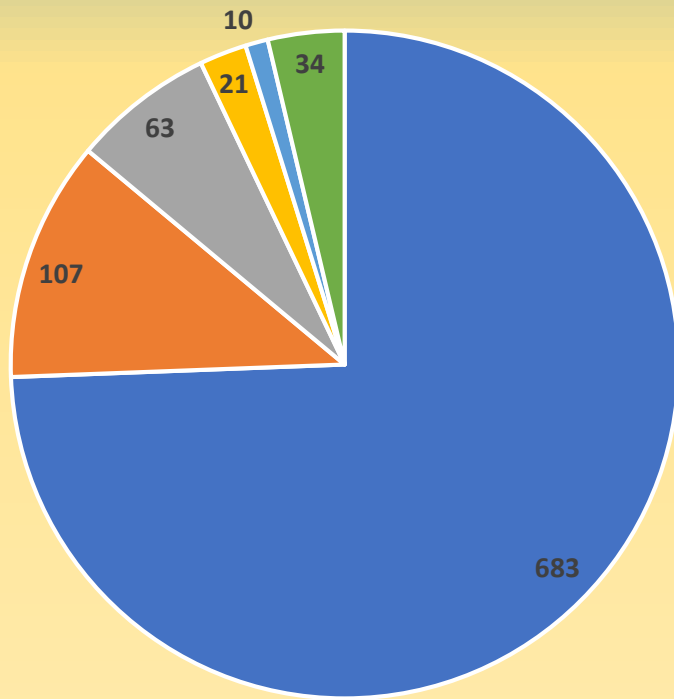


2019 – Non-Election Year

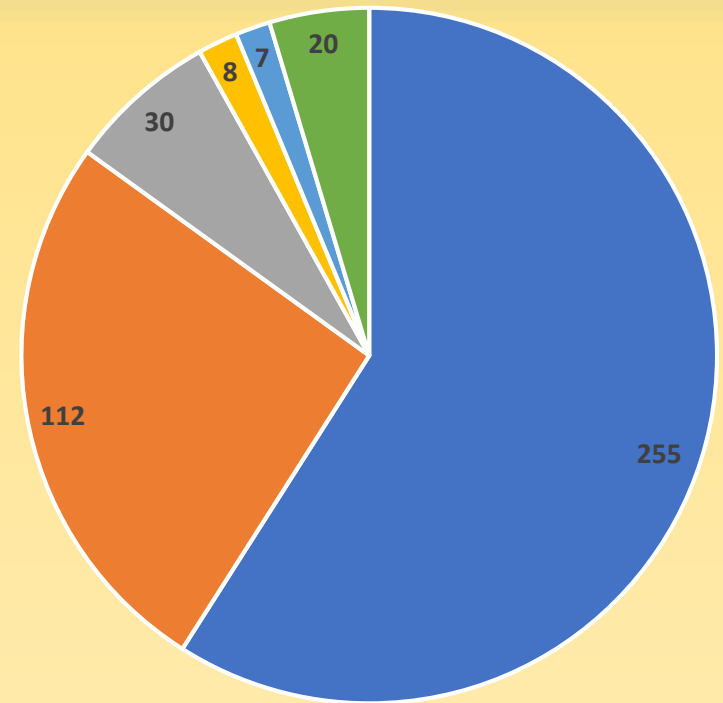


Drill Down – Campaign Cases Opened

2018



2019



- Campaign Non-Filer
- Annual Fees
- Campaign Non-Reporter
- Campaign Contribution Limits
- Laundered Campaign Contributions
- Other Campaign

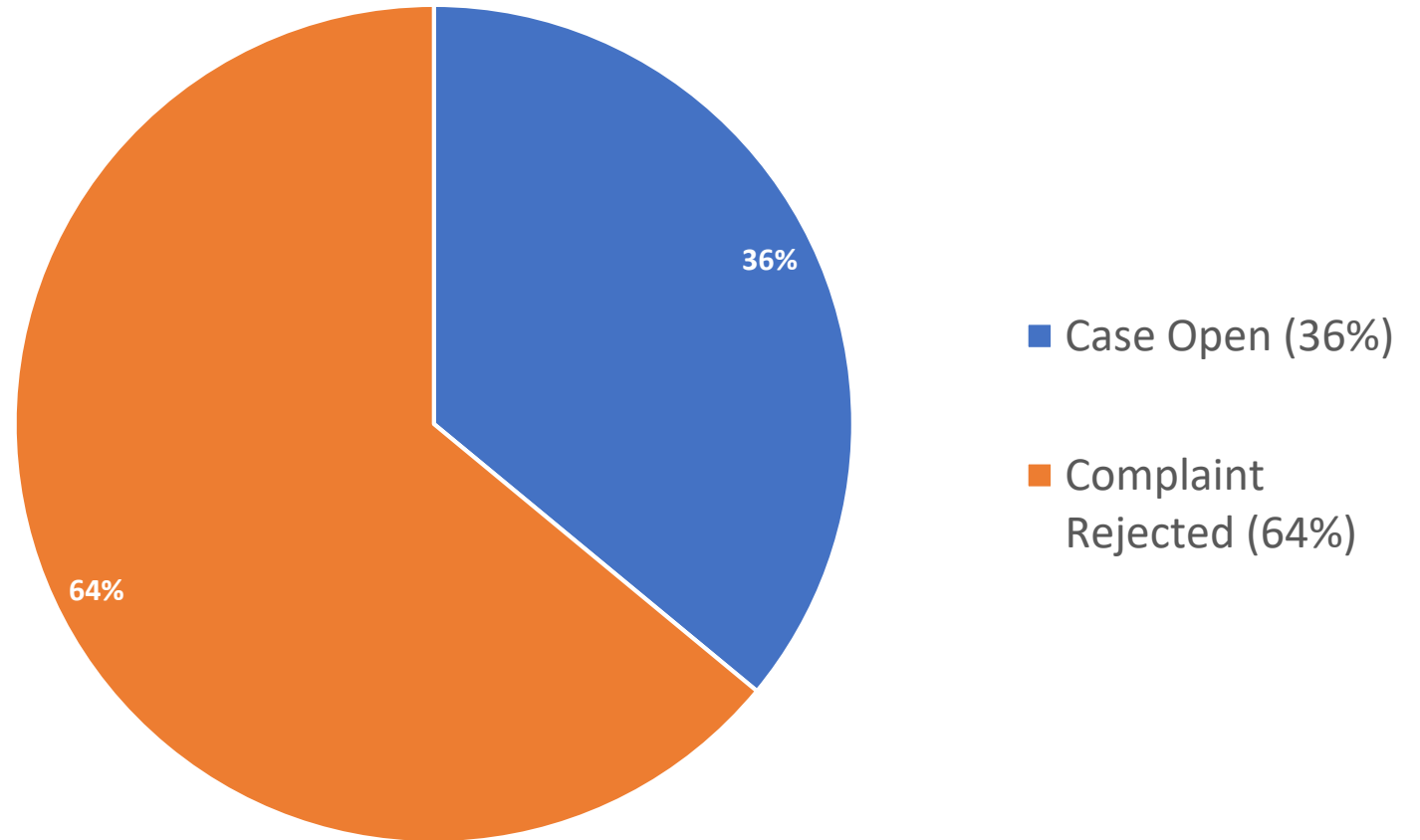
Prioritizing Complaint Processing

Complaints
Received 2018

Days Open
(Median)

10

Complaints Received in 2018

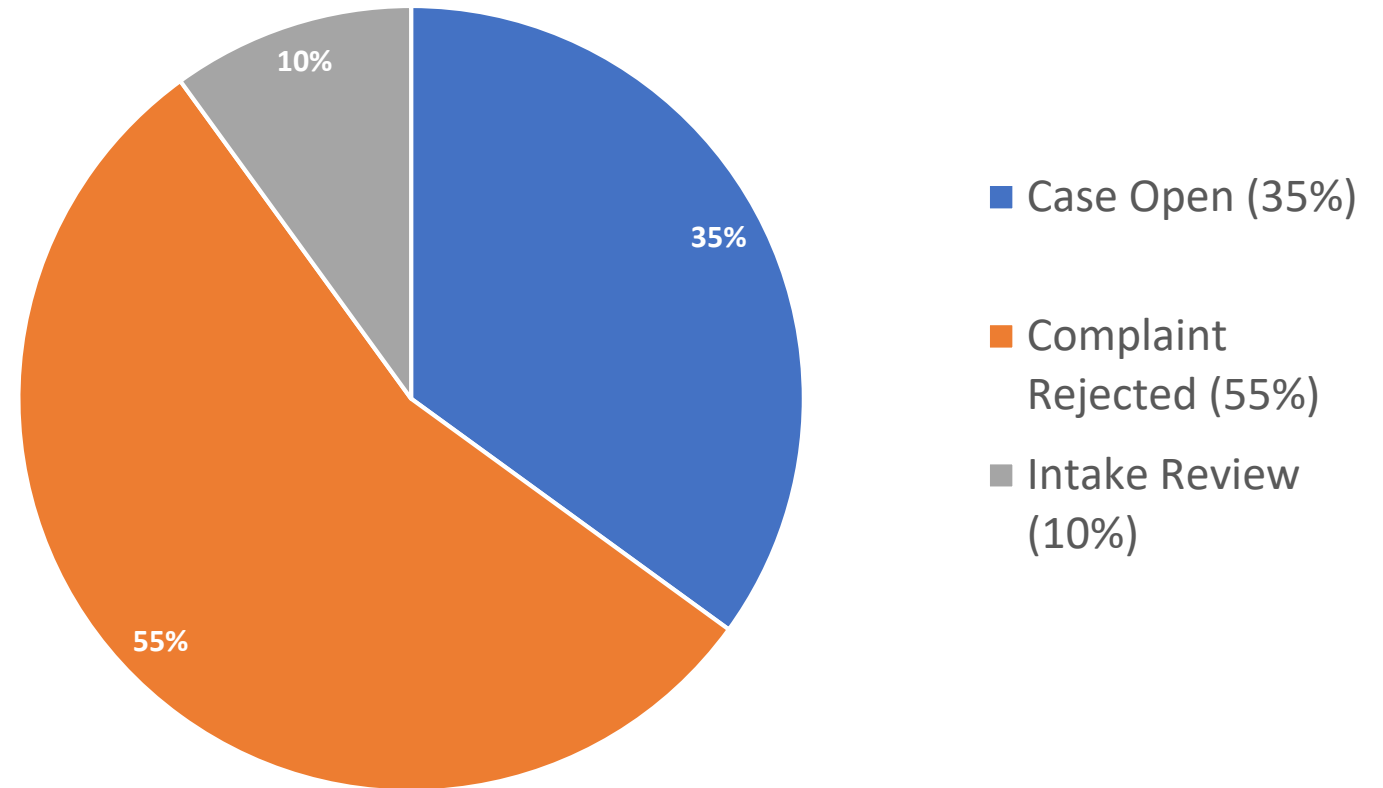


Complaints Received 2019

Days Open
(Median)

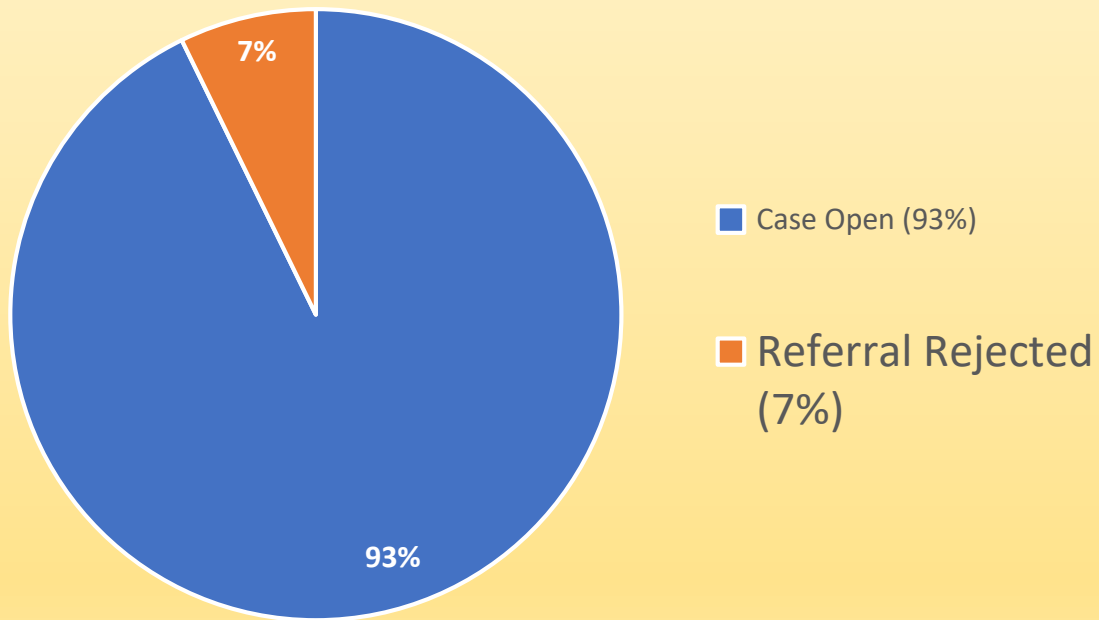
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Complaints Received in 2019

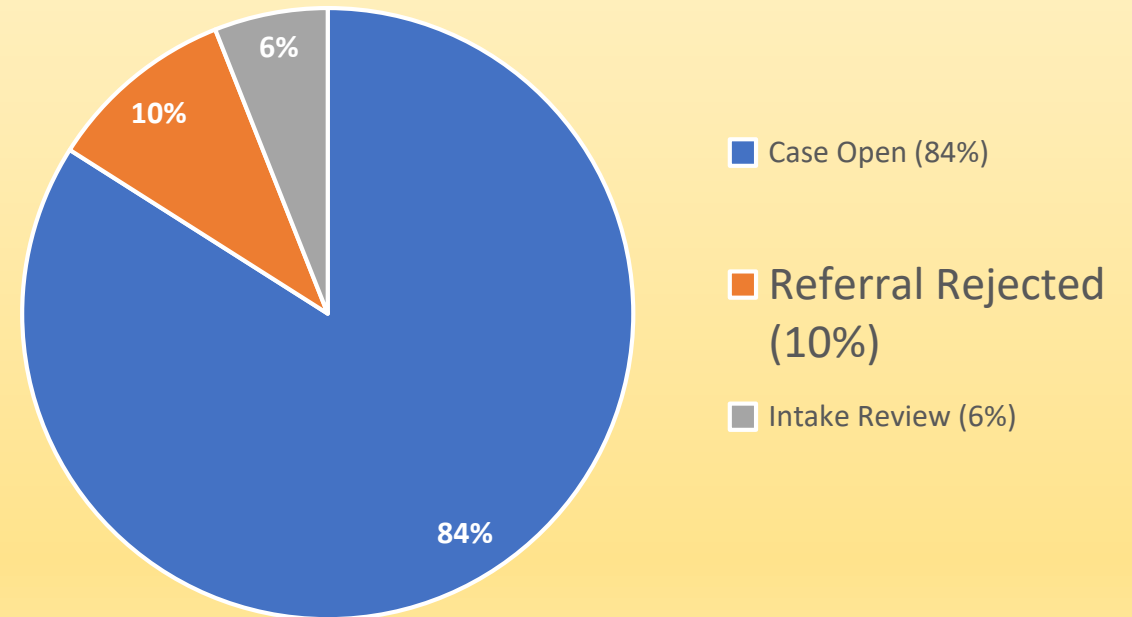


Referrals Received – 2018 v. 2019

2018



2019





**Campaign Related
Communications at
Public Expense**



**Personal Use of
Campaign Funds**



Conflicts of Interest



**Advertisements and
Mass Mailings (Disclose
Act)**



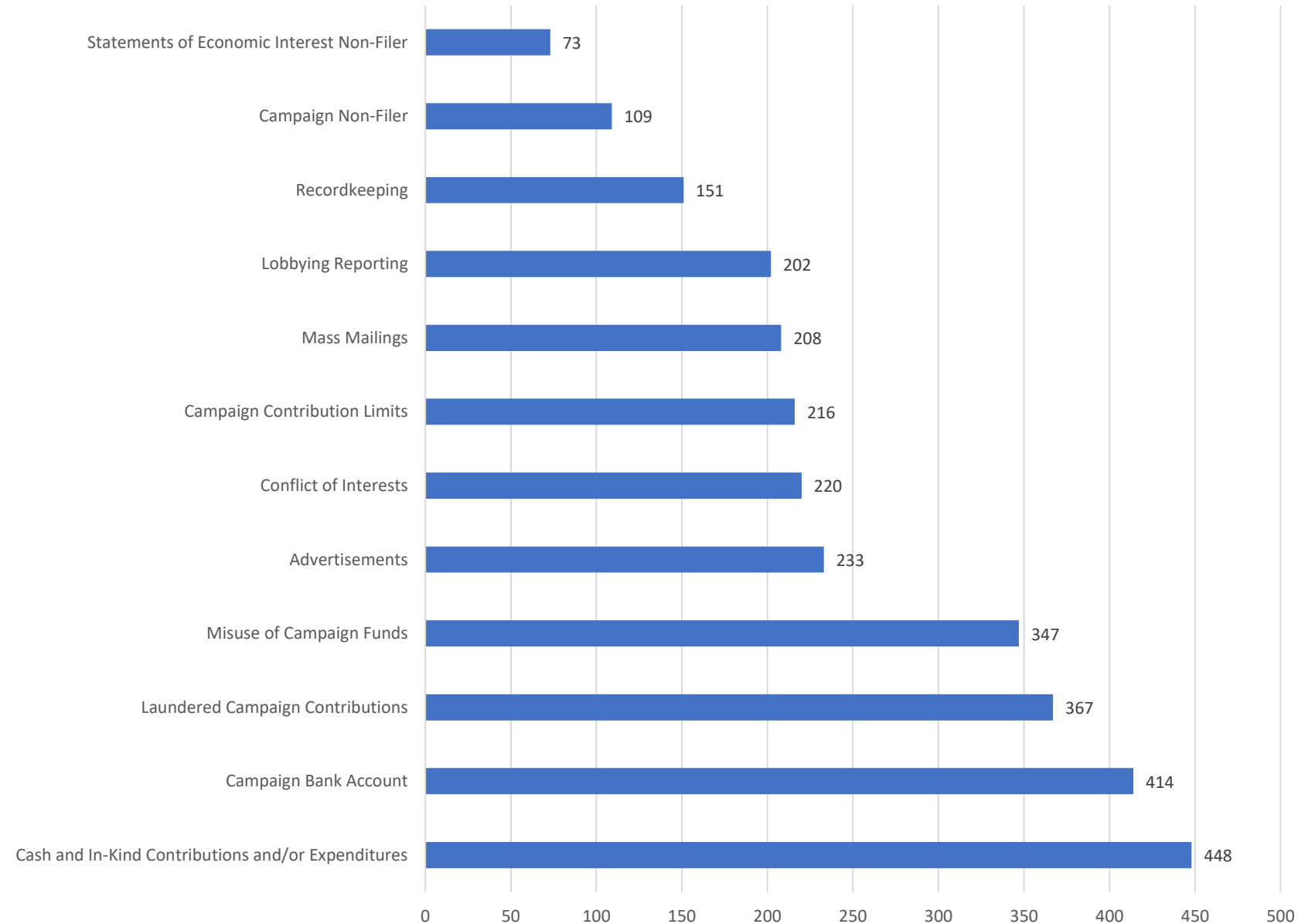
Other areas

Pursuing Nonfilers
Behested Payments
Contract Work
Pursuing defaults and
nonpayment
CPRAs

Days Open
(Median)

105

Median Case Pendency (2016-2019 Cases)



Program



2019 Enforcement Trends



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Streamline/WL Discussion



Roadblocks to Enforcement



Legislative Proposals



Regulatory Proposals



The year to come...

Penalties 2019/2020

- General Criteria Applied
- By Category:
 - Conflicts of Interest
 - Personal Use
 - Use of Cash

General Criteria

Regulation 18361.5, subd. (d).

The seriousness of the violation;

The presence or absence of any intention to conceal, deceive or mislead;

Deliberate, negligent or inadvertent;

Demonstrated good faith by consulting the Commission staff or any other government agency;

Isolated or part of a pattern;

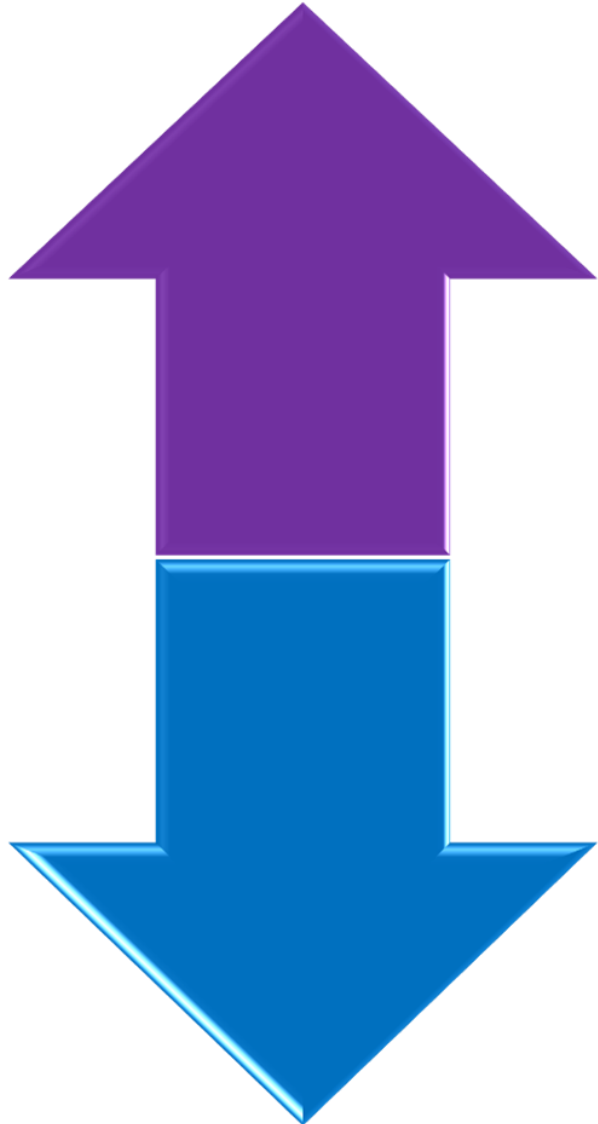
Prior record of violations of the Act or similar laws; and

Voluntarily filed amendments to provide full disclosure.

Comparable cases.

Sophistication of the parties.

Factors that Influence Penalties for Conflict of Interests Violations (Range \$3,000 - \$5,000)



Aggravating Factors = Higher Penalty


- Interest Not Disclosed in SEIs/Interest Concealed
- Large Personal Benefit Received
- Official Worked Directly on the Project that was the Subject of the Governmental Decision
- Large Benefit to Official's Economic Interest
- Pattern of Violations

Mitigating Factors = Lesser Penalty

- No Prior History of Conflict of Interest Violations
- Cooperation with Enforcement
- Interest Disclosed in SEIs
- No Longer in Office
- Requested Advice from Agency Attorney Before Governmental Decision
- Corrective Action Taken Before Complaint Filed
- Official Did Not Work Directly on Project that was the Subject of the Governmental Decision



Personal Use of Campaign Funds – (\$5,000 w. some exceptions)

- Considerations:
 - Level of Sophistication
 - Amount
 - Reimbursement
 - Frequency
 - Own Money
- 



Receipt of Cash/Making Cash Expenditures (\$1,000 - \$2,500)



- Considerations:
 - Amount
 - Percentage
 - Recordkeeping
 - Personal Use
 - Level of Sophistication
 - Proper Disclosure

Program



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Penalties 2019/2020



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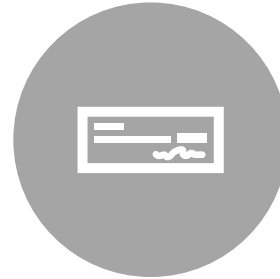


The year to come...

Streamline & Warning Letter Discussion



Major Donor
Committees



Behested Payment



What's working?



What needs some
review?

Streamline/WL Program

77% of all cases
approved by the
Commission

- What's working?
 - Extended categories – committee naming, cash, ads, recordkeeping, gift limit violations
 - No surprises
 - Efficiency
- What needs reviewed?
 - Level of detail – exclusions re: 24 hr reports
 - Threshold - percentages; max/mins
 - Population exclusion bottom level
 - Add Major Donors and Behested Payments
 - Streamline Fallout

Major Donors

Under \$30k;

No notice;

Never filed before;

Filed after contact;

Business is terminated.

Behested Payments

- Filed before Enforcement contact;
- Within 100 days of due date;
- Filed with estimated amount;
- # of payments or solicitations;
- Prior history of filing (knowledge of requirements);
- Requested info from charity;
- Amount of donation.

Exclusions –

1. Business before his/her agency;
2. Perceived or real personal benefit.

Program



2019 Enforcement Trends



Resource Allocation 2019/2020



Penalties 2019/2020



Streamline/WL Discussion



Roadblocks to Enforcement



Legislative Proposals



Regulatory Proposals



The year to come...

Roadblocks to Enforcement

Subpoenas out of state

LLCs

Limited Peace officer access

Advertisement rules

Program



2019 Enforcement Trends



Resource Allocation 2019/2020



Penalties 2019/2020



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Legislative Proposals

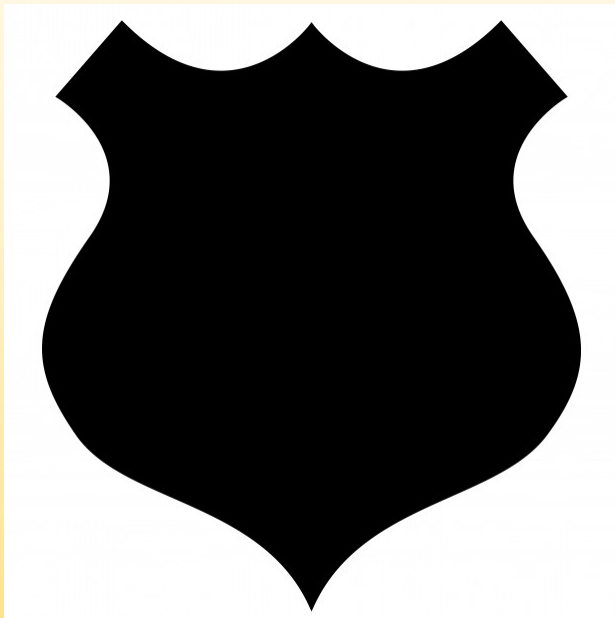


Regulatory Proposals



The year to come...

Legislative Proposals



LLC Disclosure

FPPC Limited Peace Officer Consideration

Out of State Subpoenas

Public Agency Campaign Ads Bright Line Rule

Advertisement Rules

Lobbying Audits

Program



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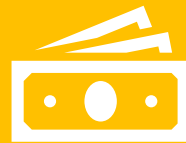
Regulatory Proposals



LLC



Enforcement procedures



Cash + Recordkeeping =
Presumption of Personal Use or
Laundering?

Program



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Legislative Proposals



Regulatory Proposals



The year to come...

The year to
come...

March 3, 2020
Primary Election
(90-day period
starts Dec. 4, 2019)





Questions?